

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed June 11, 2008. At the time of the Office Action, Claims 9-16 were pending in this Application. Claims 9, 10, 12, and 13 have been amended. Applicants respectfully request reconsideration and favorable action in this case.

Drawing Objections

The Examiner has objected to the drawings under 37 C.F.R. § 1.83(a), alleging that the elements recited in Claims 9-16 must be included in the figures or cancelled from the claims. Applicants respectfully disagree.

37 C.F.R. § 1.81 states, “The applicant for a patent is required to furnish a drawing of his or her invention *where necessary for the understanding of the subject matter sought to be patented*” (Emphasis added). See also 35 U.S.C. § 113. Accordingly, the law does not require that each and every element of the claims always be illustrated.

Here, a separate drawing showing a flowchart with the elements of Claims 9-16 recited would not be necessary for an understanding of the subject matter of Claims 9-16. The Specification discloses the controlling of the transmission of data via connections at, for example, Paragraphs [0006] through [0010] and in FIG. 1 and the supporting text. Thus, one of ordinary skill in the art would understand the elements of Claims 9-16. Moreover, the Examiner has presented no evidence to suggest that a separate drawing showing the elements of Claims 9-16 would be necessary to someone of ordinary skill in the art for understanding.

Applicants believe that corrected drawing sheets are not necessary in light of the foregoing remarks and respectfully request the objection to the drawings be withdrawn.

Claim Objections

Claims 10 and 13 were objected due to unclear limitations. Applicants amend Claims 10 and 13 to overcome these objections. Applicants respectfully request the claim objections be withdrawn.

Priority

Applicants appreciate Examiner's acknowledgement of Applicants' claim for foreign priority based on an application filed in Germany April 2, 2003 and the PCT Office March 16, 2004. Applicants do not believe that certified copies of the applications are required because this application is a national filing under 35 U.S.C. 371.

Rejections under 35 U.S.C. § 112

Claim 12 was rejected by the Examiner under 35 U.S.C. §112, second paragraph, as being indefinite and failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants amend Claim 12 to overcome these rejections and respectfully request full allowance of Claim 12 as amended.

Rejections under 35 U.S.C. §103

Claims 9-11 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0181394 by David Partain *et al.* ("*Partain*") in view of U.S. Patent Application Publication No. 2003/0182430 by Mika Aalto ("*Aalto*") and U.S. Patent No. 6,690,678 issued to Claude Basso *et al.* ("*Basso*"). Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

In order to establish a prima facie case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Even if each limitation is disclosed in a combination of references, however, a claim composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). Rather, the Examiner must identify an apparent reason to combine the known elements in the fashion claimed. *Id.* "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Finally, the reason must be free of the distortion caused by hindsight bias and may not rely on

ex post reasoning. *KSR*, 127 S.Ct. at 1742. In addition, evidence that such a combination was uniquely challenging or difficult tends to show that a claim was not obvious. *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc. and Mattel, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007), citing *KSR*, 127 S.Ct. at 1741.

The cited references, separately or as combined by the Examiner, fails to teach or suggest all the elements of amended Claims 9-11. For example, amended Independent Claim 9 recites, in part:

establishing a new data link in a first station having an assigned priority;
...
determining a function of the available free channel capacity of the transmission medium;
determining the occupancy of the transmission medium by existing data links;
determining assigned priorities of the existing data links; and
restricting the new data link based at least on the determined function, determined occupancy, and the determined assigned priorities of the existing data links.. (Emphasis added).

As noted by the Examiner, *Partain* fails to teach or suggest all of the above cited elements. (Office Action, Pages 5-6). *Aalto* also fails to teach or suggest the above cited elements. *Aalto* discloses techniques for checking the “capacities in a packet-switched before connection set-up.” Paragraph [0007]; *see also* FIG. 1 and Paragraph [0024]. *Aalto* fails to teach or suggest (a) determining the occupancy of the transmission medium by existing data links and (b) restricting the new data link based at least on the determined function, the determined occupancy, and the determined assigned priorities of the established data links.

The Examiner notes that “the available transmission is a function of the occupancy of the transmission medium by the existing data links.” However, the Examiner has failed to prove a *prima facie* case of obviousness because the Examiner has failed to provide passages within *Aalto* that supports the Examiner’s position. Applicants believe that *Aalto* fails to teach or suggest determine the occupancy of the transmission of established data links.

Basso also fails to teach or suggest the above cited elements. *Basso* discloses techniques for adjusting the bandwidth for voice call connections. (Column 4, Lines 24-37). *Basso* fails to teach or suggest (a) determining a function of the available free channel capacity of the transmission medium; (b) determining the occupancy of the transmission medium by existing data links; and (c) restricting the new data link based at least on the determined function and the determined occupancy.

For at least the reasons discussed above, Applicants respectfully request reconsideration and allowance of Independent Claim 9 and all claims that depend therefrom.

Allowable Subject Matter

Applicants appreciate Examiner's consideration and indication that Claims 12-16 would be allowable if rewritten to overcome the rejections under 35 U.S.C. §112, second paragraph, as set forth in the Office Action and to include all of the limitations of the base claim and any intervening claims.

Applicants amend Claim 12 to overcome the section § 112 rejection and to include the elements of base Claim 9. Applicants submit that amended Claim 12 and dependent claims therefrom are in condition for allowance and request favorable action.

Association of Customer Number and Change of Correspondence Address

Applicants respectfully request that all papers pertaining to the above-captioned patent application be associated with Customer No. **31625**, and direct all correspondence pertaining to this patent application to practitioners at Customer Number **31625**. All telephone calls should be directed to Andreas Grubert at 512.322.2545. A Revocation and Power of Attorney is filed herewith.

CONCLUSION

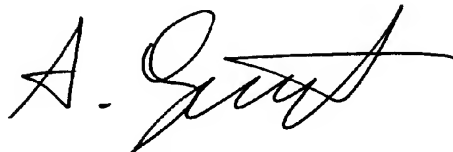
Applicants have made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicants respectfully submit a Petition for Two-Month Extension of Time. The Commissioner is authorized to charge the fee of \$490.00 required to Deposit Account 50-2148 in order to effectuate this filing.

Applicants believe there are no fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2545.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorney for Applicants

A handwritten signature in black ink, appearing to read 'A. Grubert', with a stylized flourish at the end.

Andreas Grubert
Registration No. 59,143

Date: October 22, 2008

SEND CORRESPONDENCE TO:

BAKER BOTTS L.L.P.

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